

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

UNITED STATES OF AMERICA  
upon the relation and for  
the use of the TENNESSEE  
VALLEY AUTHORITY  
Plaintiff

V.

NO. 1:96CV233-B-A

ADDITIONAL RIGHTS WITH RESPECT  
TO AN EXISTING EASEMENT AND  
RIGHT-OF-WAY OVER LAND, IN  
LOWNDES COUNTY, MISSISSIPPI

GEORGE A. WEIR, JR.  
Defendants

**MEMORANDUM OPINION**

This cause comes before the court upon the motion of the plaintiff, United States of America, through its agent the Tennessee Valley Authority (TVA), for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure. The defendant George A. Weir, Jr., has not filed a response as contemplated by Rule 8(d) of the Uniform Local Rules. The court, having fully considered the plaintiff's motion, finds that it is well-taken and should be granted.

**FACTS**

This is a condemnation action in which the TVA is seeking to condemn additional rights with respect to an existing easement and right-of-way over land located in Lowndes County, Mississippi. The condemned land is to be used for the erection, operation and

maintenance of electric power transmission circuits. In accordance with the Declaration of Taking Act, 40 U.S.C. § 258a, the plaintiff, at the time of filing this action, deposited \$2,100.00 with the court as its estimate of just and liberal compensation for the property taken.

Defendant Weir has filed a letter with the court objecting to the taking of his property on the grounds that the TVA has not sufficiently designed its power line so as to limit the number of additional structures to be placed on his property, and that just compensation has not been offered for his loss. Defendant Weir has further filed a letter motion in which he asks the court to require the TVA to pay him for the value of trees removed from his property. The plaintiff has moved for judgment on the pleadings with respect to the taking on the grounds that the defendant's objections do not raise a justiciable issue in this action.

#### **LAW**

The TVA's statutory authority under 16 U.S.C. §§ 831c(h), (i), (j), and 831x, to acquire property to carry out the purposes of the TVA act is clear. This authority was expressly recognized by the United States Supreme Court in United States ex rel. TVA v. Welch, 327 U.S. 546 (1946), in which the Court stated:

To make clear beyond any doubt the TVA's broad power [of condemnation], Congress in § 25 authorized [TVA] to file proceedings..."for the acquisition by condemnation of any lands, easement, or rights of way which, in the opinion of [TVA], are necessary to carry out the provisions of this Act."

Id. at 554. Accord United States ex rel. TVA v. An Easement and Right-of-Way, Etc., 235 F. Supp. 376, 377 (N.D. Miss. 1964) ("The authority and power of TVA to condemn all property that it deems necessary for carrying out the purposes of this Act is established beyond question.").

Moreover, where a federal taking of property is authorized, such as through the TVA Act, the necessity, expediency, location and extent of the taking are purely legislative questions for Congress or the executive agency to which Congress has delegated condemnation authority. As such, objections to such determinations do not present a justiciable issue. In Joslin Mfg. Co. v. City of Providence, 262 U.S. 668 (1923), the Supreme Court specifically held:

That the necessity and expediency of taking property for public use is a legislative and not a judicial question is not open to discussion....The question is purely political, does not require a hearing, and is not the subject of judicial inquiry.

Id. at 678 (citations omitted). See also Illinois Cent. R.R. v. TVA, 445 F.2d 308, 313 (6th Cir. 1971); United States ex rel. TVA v. An Easement and Right-of-Way, 682 F. Supp. 353, 357 (M.D. Tenn. 1988); United States ex rel. TVA v. An Easement and Right-of-Way, 246 F. Supp. 263, 270 (W.D. Ky. 1965), aff'd, 375 F.2d 120 (6th Cir. 1967); United States ex rel. TVA v. An Easement and Right-of-Way, Etc., 235 F. Supp. 376, 377 (N.D. Miss. 1964).

The declaration of taking filed herein affirmatively states that the taking is "for the use of the United States of America acting by and through its agent, the Tennessee Valley Authority" and that the "public use for which the additional rights are taken is the erection, operation, and maintenance of electric power transmission circuits." The defendant does not suggest in any way that the stated purpose for the taking is fraudulent, and it is clear that condemnation for the stated purpose is within the authority of the TVA Act. Thus, in accordance with the precedents cited above, this court must conclude that defendant's objection to the taking of his property by the TVA does not present a justiciable issue in this action. Any concerns the plaintiff may have regarding the amount of compensation can be addressed at the compensation hearing to be held at a later date.

#### **CONCLUSION**

For the foregoing reasons, the court finds that the plaintiff's motion for judgment on the pleadings should be granted.

An order in accordance with this memorandum opinion will issue, along with an order of possession.

THIS, the \_\_\_\_\_ day of April, 1997.

---

NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE